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***Division of Institutions  
Policy and Procedure***

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**Chapter:** G  
**Section:** .0100  
**Title:** Outstanding Charges/Detainers  
**Issue Date:** June 2, 2023  
**Supersedes:** October 20, 2014

**I. PURPOSE**

The purpose of this policy is to provide guidelines for addressing Outstanding Charges and Detainers with the offender population.

**II. APPLICABILITY**

This policy applies to the Division of Institutions

**III. DEFINITIONS**

**A. Detainer**

An officially documented request from a recognized authority to the DAC to provide notice of an offender's release and requires the Department to transfer custody to the requesting authority or their agent, based on civil, criminal, or status actions at release. As with pending charges, cases for which a detainer has been filed may be prosecuted prior to the offender's release from prison.

**B. Notification**

An officially documented request for DAC to formally notify the requesting authority of an offender's release consideration so a decision can be made regarding further action by that authority. Notifications may also apply to status, criminal, or civil cases.

**C. Pending Charge**

A charge is deemed pending when information is received from a reliable and credible source that a criminal, civil, or status action has been initiated against an offender by a recognized authority and is awaiting resolution; however, no official documentation has been received requesting Institutions to transfer custody of the offender to that authority upon discharge from prison. The absence of documentation does not preclude the requesting authority from proceeding with Court action while the offender is incarcerated.

**D. Victim/Witness Notification**

A formal request by an associated victim or witness to be notified by Institutions of an offender's promotion to minimum custody, imminent release date, escape from custody, or death in accordance with the Fair Treatment for Victims and Witnesses Act.

## IV. POLICY

A. Outside agents frequently express custody interest or request release information about offenders confined under the control of the North Carolina Department of Adult Correction (DAC), Division of Institutions. Recognized authorities include any in-state, out-of-state, or federal criminal justice or law enforcement agency, and other authorized governmental agencies such as the Immigration and Customs Enforcement (ICE), U.S. Military, and Secret Service. Inquiries of this type are defined by the Division as pending charges, detainers, or notifications and may relate to criminal, civil, or status (i.e., deportation proceedings) actions. Such actions come to the attention of staff either by way of official documentation or other credible sources (Administrative Office of the Courts database, Division of Criminal Information Computerized Criminal History, direct communication with court, or law enforcement officials), or the offender's submission of a request for a speedy trial. Actions that become known due to official documentation are established as detainers or notifications; whereas actions revealed by other means are specified as pending charges.

## B. Processing Requirements

## 1. Pending Charges:

- a) Facility staff are responsible for verifying and entering pending charges into the automated offender record system. When a facility receives information from a credible source suggesting the presence of an outstanding charge against an offender, staff will substantiate it with the appropriate Clerk of Court or District Attorney and will then view the Detainer screens (OR44 and OR45) to determine if the information has already been entered. If no entry is found for the specific charge, staff will immediately add the necessary information to the Detainers and Pending Charges (OR45) screen, using a type code of P (Pending Charge). The use of the type code of D (Detainer), in this instance, is strictly prohibited.
- b) A District Attorney or Clerk of Court may send a written request, in the form of a Writ of Habeas Corpus ad Prosequendum or Prosecutor's letter, to Institutions for an offender's presence in Court to answer a pending charge. Writs are processed by the Population Management Section of Institutions, MSC Box 4274, Raleigh, North Carolina 27699-4274, fax number (919) 733-0772, and should be forwarded to that section immediately if received at a facility. Population Management staff will enter the information on the Writ Scheduling Request (IP75) screen in the automated offender record system. This will automatically update the Writ Listing (IP76) screen for each facility. Facility staff are responsible for viewing the IP76 screen daily and shall ensure offenders are transported to court. Transporting officers shall be provided a copy of the court's writ prior to departing the facility in case questions arise related to the court appearance.
- c) If a law enforcement officer from the requesting county arrives at the facility to transport an offender to trial, staff will require the officer to produce adequate credentials, including a copy of the Writ. Any questions regarding the authenticity of the request should be directed to the Clerk of Court or the District Attorney in the county in which the charge originates. The Population Management section may also be contacted for further assistance, if needed. Once the request has been verified, the

facility will release the offender to the local authorities for a period not to exceed 60 days, in accordance with NC Gen. Stat. § [15A-711](#). The Transfer of Custody form shall be provided to the receiving officers in an effort to provide details related to the offender's prison adjustment. In the event the 60 days period is exceeded, facility staff will contact the holding authority to verify the offender's status and every 60 days thereafter, if necessary, until the offender is returned to the custody of the Division.

- d) Upon the offender's return from the local authorities, facility staff will confirm the disposition of the charge on the Administrative Office of the Court's database or by direct contact with the Clerk of Court or District Attorney. If a disposition was made by the Court, facility staff will immediately update the OR45 screen to reflect the resolved status (code 7) of the pending charge. Comments explaining the disposition of the charge and the confirmation source must be entered first. Any additional commitments received will be recorded in the automated offender record system on the OT21 screen (Offender Sentence Structure) by facility staff. A copy of the commitment, along with completed fingerprints, will be sent to the Fingerprint Identification section, MSC Box 4276, Raleigh, North Carolina 27699-4276, Courier number 53-71-00, for identification confirmation, after which it will be forwarded to Combined Records for auditing. A copy of the commitment will also be placed in the offender's unit/institution file.

## 2. Detainers

- a) The Combined Records Section of DAC is responsible for the processing of all officially documented detainers; however, in the event a detainer is received at a facility, facility staff will immediately enter the record on the Detainers and Pending Charges (OR45) screen as an undocumented detainer, type code D (detainer), and then forward the documentation to Combined Records at MSC Box 4226, Raleigh, North Carolina 27699-4226. Upon receipt of a detainer, Combined Records will authenticate and enter or update, as appropriate, the record on the OR45 screen as a documented detainer. Only Combined Records can enter or update documented detainers in the automated offender record system.
- b) Detainers filed by authorities within the state of North Carolina will be processed and maintained entirely by Combined Records. Out-of-state detainers will be entered and updated in the automated offender record system by Combined Records, after which they will be forwarded to the office of the Interstate Agreement on Detainers Administrator, Department of Adult Correction, MSC Box 4224, Raleigh, North Carolina 27699-4224 for further processing, per the Interstate Agreement on Detainers Act. Note: United States jurisdictions which are not a party to the Interstate Agreement on Detainers are Louisiana and Mississippi. Requests filed by these jurisdictions will be forwarded to the Governor's Office, via the Interstate Agreement Administrator, for necessary processing. Detainers filed by federal authorities will be acknowledged and entered and updated in the automated offender record system by Combined Records. Any additional processing will be completed by the requesting federal agency.
- c) In-State Detainers:
  - i. Upon receipt of a detainer from a District Attorney/Clerk of Court within the state of

North Carolina, Combined Records will determine if a list of the charges against the offender has been included, and if not, will take necessary action to obtain that list. That office will then enter the detainer information in the automated offender record system and acknowledge receipt of the detainer to the requesting authority on a Form DC-214A. Two copies of the Acknowledgment (DC-214A), along with two copies of Form DC-215A (Certificate of Offender Status) and three copies of Form DC-215 (Notice to Offender) will be sent to the facility housing the offender to which the detainer refers. Facility staff will provide the offender with copies of those forms, as well as thoroughly inform and advise the offender in accordance with NC Gen. Stat. § [15A-711](#), that 1) they have the right to request the appropriate prosecuting official of the jurisdiction where the charges are pending to proceed against them; 2) if they do proceed, that they will be brought to trial within six months unless other provisions are made or a continuance is granted; 3) if the prosecutor does not proceed within the six months, the detainer will be withdrawn; and 4) if they do not request a speedy trial, the prosecutor may make a written request for their presence to stand trial for charges pending against them and that they will be released to local authorities for a period not to exceed 60 days.

- ii. Should the offender decide to initiate the process of obtaining a resolution to pending charges, they will be instructed by facility staff to make a written request for a speedy trial directly to the Clerk of Court in the county where the charges are pending. The request, along with a copy of Forms DC-215 and DC-215A, will be sent by registered mail. The date the request is mailed and the registered mail identification number will be recorded on the bottom of the remaining two copies of Form DC-215. Facility staff will return one of those copies to Combined Records. The other copy will be filed in the offender's unit/institution jacket.
- iii. If the prosecutor does not proceed against the offender within six months of the date of the offender's request, Combined Records will send Form DC-215C to the appropriate Clerk of Court/District Attorney advising them that the detainer is being returned and cannot be re-filed, pursuant to NC Gen. Stat. § [15A-711](#)(c). Combined Records will subsequently withdraw the detainer from the offender's record by updating the status code on the OR45 screen.
- iv. In those cases where a detainer has been filed, but the prosecutor subsequently decides not to proceed against the offender, the prosecutor may officially request that the detainer be canceled and returned. Combined Records will update the OR45 screen in the automated offender record system to reflect the appropriate status code and return the detainer, along with Form DC-215-B (Cancellation Letter) to the requesting official.
- v. Where the prosecutor does proceed against the offender, either of their own volition or in response to an offender's request for a speedy trial, they will follow the same procedures as those established for pending charges, with regards to Writ requests and temporary Court releases. (See IV. B. 1. b) and c)).
- vi. As with pending charges, facility staff will confirm the Court action upon the offender's return, process any additional sentences, if received, on the OT21 screen,

and forward a copy of the new commitment, along with fingerprints, to Combined Records, via the Identification Branch. OR45 screen status updates; however, will be done by Combined Records. In the event a new sentence was not imposed by the Court, the prosecutor will notify Combined Records in writing of the Court disposition.

d) Out-of-State Detainers:

- i. When a detainer is filed by an out-of-state authority, it will initially be sent to Combined Records for acknowledgment and entry into the automated offender record system on the OR45 screen, after which it will be forwarded to the Interstate Agreement on Detainers Administrator for further processing. A copy of the acknowledgment (DC-214) and a Form 1 (Notice of Indictment, Information on Complaint and Right to Request Disposition) will be sent to the offender and the facility informing them of the detainer. Facility staff will advise the offender of their right to request a speedy trial and of the prosecutor's right to proceed against them as specified in Form 1.
- ii. Prosecutor's Request:
  - a. Where the prosecutor initiates a request for trial, they will submit a Form 5 (Request for Temporary Custody) to the Interstate Agreement on Detainer Administrator, in accordance with the Interstate Agreement on Detainers. The Administrator will forward a copy of that form to the offender, accompanied by a Form 5-A (Prisoner Option of Rights and Advisory Form), advising the offender of their right to contest their return to the requesting state in a hearing before a Judge or by petition to the Governor. The offender will indicate by witnessed signature on Form 5-A, their intention to request or waive a hearing to determine if the requesting state or jurisdiction has presented the proper papers and correctly identified the accused and return it to the Administrator.
  - b. In the interim, the Administrator will determine if a detainer is already on file in the automated offender record system or if one accompanied the request form. If the detainer is not on file or if one was not attached to the request, the Interstate Agreement Administrator will ask the out-of-state prosecutor to file under the Interstate Agreement on Detainers. If the detainer is on file or is received with the request, the Administrator will prepare a Form 3 (Certificate of Offender Status) and send it to the prosecuting attorney. In the event detainers are on file from other jurisdictions within the same state, copies of Form 3 will also be sent to them, along with a cover letter requesting an immediate reply regarding their intentions. Concurrently, the Administrator will notify the Governor of North Carolina in writing of the out-of-state request for temporary custody of the offender. If the Governor disapproves the request, the requesting authority will be contacted and actions under the agreement will terminate.
  - c. If the out-of-state prosecutor does not respond within 30 days of receipt of Form 3, and if the Governor has not disapproved the request during this period

(signifying tacit approval), the Interstate Administrator will send signed copies of Form 4 (Offer to Deliver Temporary Custody) to the out-of-state prosecutor, the other officials in the same state who received a copy of Form 3, and the offender. The prosecutor will also receive a copy of Form 5-A, indicating the offender's decision to waive or request a hearing to contest their return to that state/jurisdiction.

- d. If the offender exercises their right to a hearing, the Interstate Agreement Administrator will send copies of Form 5, Form 5-A and the warrant/detainer, as well as necessary offender identification data, to the Court official of the county in which the offender is confined. That official is responsible for scheduling a hearing before the Court, preparing the Judge's Order, pursuant to the Interstate Agreement on Detainers, and returning said Order to the Interstate Agreement Administrator.
- e. In the event the out-of-state prosecutor does not respond within 60 days after Form 4 is forwarded, the Interstate Administrator will remind the prosecuting official in writing of the 180-day limitation under the uniform agreement.

iii. Offender's Request:

- a. The offender may petition for final disposition of an outstanding charge by submitting a written request to the Interstate Agreement on Detainers Administrator for a speedy trial. Upon receipt of that request, the Interstate Agreement Administrator will verify that a detainer is on file in the automated offender record system. If the detainer has not been recorded, the Interstate Administrator will advise the offender in writing to file a written request to the appropriate jurisdictional authority, petitioning the out-of-state prosecutor to proceed, pursuant to NC Gen. Stat. § [15A-761](#).
- b. If a detainer is on file, the Interstate Agreement Administrator will prepare Form 2 (Offender's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information or Complaints) and Form 4 (Offer to Deliver Temporary Custody) and send them to the offender in question, along with a cover letter, instructing them to carefully read both forms, indicate their choice of counsel or make a request of the Court to appoint counsel, sign and return for further processing.
- c. Upon receipt of the signed copies of Forms 2 and 4 from the offender, the Interstate Administrator will prepare Form 3 (Certificate of Offender Status) and forward signed copies of all three forms, with a cover letter, to the Prosecuting Attorney, the Clerk of Court, the Agreement Administrator on Detainers for the other state, and the offender. Correspondence to the Prosecuting Attorney and the Clerk of Court will be sent by certified mail.
- d. Should there be more than one detainer on file against the offender from other jurisdictions within the same state, the Interstate Administrator will send officials from those jurisdictions signed carbon copies of Forms 2, 3, and 4, so

the offender can be tried on all charges pending against them. Those officials will submit a Form 8 (Prosecutor's Acceptance of Temporary Custody Offered in Connection with Another Prosecutor's Request for Disposition of a Detainer) to the Interstate Agreement Administrator who will assist in making necessary arrangements for the offender's presence at trial.

- e. If the Interstate Agreement Administrator does not get a response from the out-of-state authorities regarding their intentions to proceed after 90 days from the date of receipt of Forms 2, 3, and 4, that office will send a follow-up letter, reminding them of the 180-day limitation.
  - f. In either case, if no reply is received within 180 days, the out-of-state authorities will be requested to withdraw their detainer in accordance with the Interstate Agreement. Because a continuance may have been granted without notifying the Interstate Administrator, no additional communication will be sent which could prevent further action on their part.
  - g. Where the prosecutor does reply, they will forward Form 7 (Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer) and Form 6 (Evidence of Agent's Authority to Act for Receiving State) to the Interstate Agreement Administrator. If these forms are received at the facility where the offender is housed, they will be forwarded immediately to the Interstate Administrator who will then affect the necessary action to transfer temporary custody of the offender to the out-of-state authorities.
  - h. When the Law Enforcement Agent assigned by the out-of-state authority to transport the offender arrives at the facility, staff will inspect and verify their credentials, including their copy of Form 6, prior to transferring custody of the offender. Additional verification, if necessary, may be obtained by contacting the Office of the Interstate Agreement on Detainers. All costs of transportation, caring for, keeping, and returning the offender are to be paid by the demanding state. Institutions is not authorized or required to transport offenders to or from trial in other states. The Transfer of Custody form shall be provided to the receiving officers to provide details related to the offender's prison adjustment.
  - i. After the offender has been tried, the out-of-state prosecutor will prepare Form 9 (Prosecutor's Report on Disposition of Charges) and send it to the Interstate Compact Administrator. A copy of that form will be sent to Combined Records, the OR45 screen will be updated in the automated offender record system based on the information provided, and a copy will be placed in the offender's field jacket at the unit/institution. The Form 9 serves as notice that the offender is to be released to the out-of-state authorities upon completion of their North Carolina sentence, provided another sentence has been imposed.
- iv. Request for an Offender as a Witness
- a. The requesting out of state jurisdiction shall provide under seal of that court



that there is a criminal prosecution pending in that state or a grand jury investigation has commenced and an offender under the control of Institutions is a material witness in the prosecution or investigation for a specific number of days. This petition is presented to a superior court judge in the county where the offender is confined. The superior court judge will then set a date and time for a hearing and order the person having custody of the offender to produce them at the hearing.

- b. At this hearing, the judge will determine if the offender is a material and necessary witness in the requesting state. An order will then be issued for the offender to appear in the court where the prosecution or investigation is pending, under terms and conditions as established by the judge, including provisions for the return of the offender at the conclusion of their testimony, proper safeguards for their custody, and proper financial reimbursement or other payment for all expenses incurred in the production and return of the offender.
- c. The offender shall be released to the representatives of the petitioning jurisdiction upon presentation of valid identification.
- d. Appropriate OPUS files will be updated to reflect the offender as out to court in the petitioning jurisdiction.
- e. If the offender has not been returned to custody by the date established by the superior court judge, then facility staff shall contact the receiving jurisdiction regarding their status.

e) Notifications

- i. Any written requests for notification of an offender's release date from a recognized authority will be forwarded to Combined Records for authentication and entry in the automated offender record system on the OR45 screen as type N. As with detainers, receipt of the request will be confirmed in writing to the requesting authority by Combined Records. In the event a pending criminal charge is determined to be associated with a notification, facility staff will also enter the record as a pending charge for classification purposes.
- ii. In those cases where a victim/witness formally requests to be notified of an offender's release, either individually or through the prosecuting attorney, record entries will be documented on the OR92 (Victim/Witness Notification) screen by Combined Records. That section will acknowledge the request in writing and send copies to the victim, the prosecuting attorney, if necessary, and the facility housing the offender in question. It is the responsibility of the victim/witness to advise Combined Records of any address and/or telephone number changes.

(These procedures are to be followed until such time as they may be superseded by another automated record system for victims/witnesses).



## C. Reclassification of Offenders with Pending Charges/Detainers

1. Upon determination that a serious pending felony charge or detainer, generally defined as those felonies involving sexual assault, threat to human life or unprovoked physical violence, exists or has been filed against an offender, facility staff will generate a reclassification action for a custody review and, if necessary, job/program removals, after ensuring that the information has been properly recorded on the OR45 screen. Entry of this information will automatically update the Offender Custody Classification Case Factor screen to reflect the suggested classification. In cases where the seriousness of a criminal or status detainer, as in out-of-state or Federal actions, cannot be readily determined, it will be accorded the maximum number of case factor points.
2. Each time an offender has a custody evaluation, Staff should contact the local or state authority and document the status of pending charges and detainers on the Detainers and Pending Charges screen (OR45). In cases where the local or state authority cannot be reached, AOC and/or CJ LEADS should be used to check the status of in-state pending charges and detainers and DCI for out-of-state pending charges and detainers. If the charges have been resolved, facility staff will update the OR45 screen to reflect the new status, provided the charges have been entered as pending or undocumented. Note that comments explaining the disposition of the charges and the confirmation source must be entered before updates can occur. In the case of documented detainers that have been resolved, Combined Records will update the status code, upon receipt of written notification from the appropriate Clerk of Court/District Attorney. Entries of this type will update the Offender Custody Classification Case Factor screen, accordingly.
3. In the case of a felon who, because of a serious pending felony charge/detainer, case factors at a more secure custody grade than their current assignment, facility staff will make a recommendation for demotion or retention in custody based on an objective analysis of all pertinent factors. Further investigation of a serious detainer, to determine the basis of the charge and the prosecuting official's intention to proceed, may be initiated by facility staff prior to making a recommendation. If the accused offender is not housed in regular population, they will be notified by facility staff at least 48 hours in advance, by way of Form DC-123. The notice will specify the nature of the charge so the offender may speak on their own behalf. Final custody action decisions will be made in accordance with Departmental classification request and review procedures. (See Institutions policy C .0100, Offender Custody Classification).
4. Misdemeanants with serious pending felony charges/detainers will be considered for demotion to medium custody with assignment to an appropriate medium custody facility. A notice to offender is required prior to the classification action being generated, per Institutions policy C .0100.
5. In any case in which a detainer is based on serious charges and the offender's presence at the unit/institution constitutes a threat to order and security, the offender may be placed on Restrictive Housing for Administrative Purposes pending a hearing and transfer to a more secure facility. (See Institutions policy O .0100, Restrictive Housing for Administrative Purposes).

**D. Release Procedures**

1. Where a detainer has been filed, Combined Records will send three copies of Form DC-216 (Notice of Release) to the authority due to receive custody of the offender by detainer, at least 30 days in advance of the offender's release date, or immediately if the release date is less than 30 days away. Two of the three copies will be returned to Combined Records with appropriate entries regarding that authority's intent to accept the offender into custody upon their release. One of the two copies returned will be sent to the facility housing the offender in question. Facility staff can also obtain information about scheduled detainer releases in a selected time period by viewing the OR46 screen in the automated offender record system. The same release notice procedures apply in those cases in which the 180-day time limitation has elapsed. Any correspondence sent or received on a particular offender regarding detainers can be accessed by the facility on the OR47 screen.
2. Upon proper credential verification by facility staff, the offender will be released to the Law Enforcement Agent authorized to take them into custody. If the Law Enforcement Agent does not arrive to take the offender into custody by 4:00 p.m. on the date their sentence expires, facility staff will arrange for the offender to be released to the local sheriff's office to await arrival of the requesting authority. In the event the local sheriff's department is unable to take the offender into custody, facility staff will contact sheriff's departments from surrounding counties to accept custody, provided the authority who issued the detainer agrees. If an agreement cannot be reached, facility staff will advise the issuing authority of the Division's obligation to release the offender.
3. If two or more detainers are on file, the authority having the earliest dated detainer will have first choice; however, in-state detainers will be given priority over out-of-state detainers. Regardless of when the detainers are filed, staff should ensure all other detainers and pending charges have been disposed of prior to releasing any offender with an ICE detainer on file since the offender will likely be deported and unavailable for prosecution. The agency cited as having the detainer or pending charges should be contacted as outlined in the policy and advised of the upcoming release date and the deportation detainer. Should the jurisdiction opt to not pursue the criminal charge, staff should request withdrawal of the detainer. In those instances where a detainer has not been issued, but a pending charge exists, staff should request written verification that the offender is no longer needed in that jurisdiction. The OR44/45 screen should be updated to reflect the information provided by the courts to include comments on the F11 screen. Combined Records will send Form DC-217 notifying the other authorities of the offender's status.
4. To satisfy an out-of-state detainer, the offender is given the option of signing a waiver of extradition. If they sign the waiver, Combined Records will so inform the out-of-state authority and necessary arrangements will be made to transfer custody of the offender. In the event the offender refuses to waive extradition, Combined Records will notify the out-of-state authority who will then decide whether to enter into extradition proceedings. If these proceedings are not completed by the offender's release date, Combined Records will inform facility staff who will assist the out-of-state authority in making arrangements for the offender to be temporarily detained by the local or a nearby county sheriff's department.
5. If any two in-state jurisdictions insist on obtaining the offender for trial at the time of their

release, the matter will be resolved by the Superior Court Judge having authority to act in criminal cases in the district in which the offender is confined.

6. In cases where a prosecuting authority has not filed a detainer but has requested notification of an offender's release date by official documentation, Combined Records will inform the requesting authority of the offender's release date, 30 days in advance, by way of Form DC-216. Subsequent to that notice, the prosecutor may initiate appropriate action to take custody of the offender at the time of his release.
7. If the OR45 screen reflects unresolved pending charges at the time of the offender's release, facility staff should contact authorities in the jurisdiction in which the charges originate, to advise them of the scheduled release. As in the case of notifications, this will allow the authorities to take further action, if desired.
8. Where a victim or witness has made a formal request to Institutions to be notified of an offender's release from custody, Combined Records will send a written notice to the victim and the prosecuting attorney, if requested, approximately 30 days in advance of the offender's scheduled discharge date. A list of offenders who have a victim/witness attached to their present sentence and are scheduled for release in a selected time period, is available on the OR95 screen of the automated offender record system. This screen also shows if the victim/witness letter has been sent. If the release date changes subsequent to the notice or if the offender escapes, it is the responsibility of the Warden or their designee to notify the victims and any requesting authorities. (These procedures are to be followed until such time as they may be superseded by another automated record system for victims/witnesses).

E. Exceptional Case Considerations

Exceptions to these procedures may be made by the Deputy Secretary of Institutions or other authority as designated by that Office.

V. REFERENCES

- A. NC Gen. Stat. § [15A-711](#), [15A-761](#)

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